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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,815	08/03/2001	Carmen Flosbach	FA1014 US NA	8346

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4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

MICHENER, JENNIFER KOLB

ART UNIT	PAPER NUMBER
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1762

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DATE MAILED: 12/19/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/921,815

Applicant(s)

FLOSBACH ET AL.

Examiner

Jennifer Kolb Michener

Art Unit

1762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4.

- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, step b) and in claim 4, the phrase "an uncured or at least partially cured coating" is unclear. This limitation is non-limiting because it allows for the coating to be uncured, partially cured, or more than partially cured. "[A]t least partially cured" allows for full curing.

The term "high", regarding energy in claim 1, step b), line 3 is a relative term.

Regarding claim 6, it is not clear whether the "protective" film is in addition to the coating layer of claim 1 b).

Claim 9 requires the use of UV radiation, however claim 1 requires "high energy".

Examiner considers UV radiation to be, relatively, "low energy".

The term "small" in claim 10 is a relative term.

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Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-8, 10, and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Smith et al. (US 5,166,007).

Smith teaches a method for repairing vehicles, installations and parts using a patch material on a fabric backing (abstract). Smith teaches preparing a blemished area to be repaired prior to treating (col. 2, line 45; col. 4, line 14). Directing the reader to Figure 2, Smith teaches one or more backing layers, with layer 20 being a peelable radiation-blocking layer and layer 21 being a transparent film that permits the passage of UV radiation. These backing films are coated with one or more photocurable resin impregnated fabric layers (22, 23), then a pressure-sensitive adhesive layer, 26. The patch material is then applied with its coating side down onto the blemished area. The peelable backing film is removed and the coating is irradiated (col. 3).

Regarding claim 2, the transparent film 21 also acts as a backing layer. The irradiation step occurs through said layer.

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Regarding claims 3 and 4, the patch of Smith can be used by partially curing the patch so that it becomes "tacky". Then the radiation-blocking layer is removed to expose the patch to UV radiation for full curing (col. 3, lines 28-31).

Regarding claim 5, the resin layers are curable and polymerizable by high energy photo-irradiation, as described above, and at least some of the compositions of columns 4-6 appear to be curable by free radicals.

Regarding claim 6, both the peelable layer 20 and the transparent layer 21 would be considered "protective" films. Additionally, in Figure 1, it is shown that the patch may be provided in a protective, UV-blocking pouch.

Regarding claims 7 and 8, Smith teaches that layer 26 is a pressure adhesive layer, therefore, the backing film must inherently be applied under pressure. Smith teaches the use of heat as well (col. 3, line 48).

Regarding claims 10-11, the repairs of Smith appear to be "small" and he teaches that the repaired surfaces may be automotive, as disclosed above.

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Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith.

Smith teaches that which is disclosed above regarding the use of UV irradiation to cure a repair resin on a blemished substrate. However, Smith fails to teach an appropriate wavelength range for use in his irradiation process.

Selection of a wavelength range would have been dependent upon the type of substrate repaired, the coating materials used, and the desired cure time. It is Examiner's position that it would have been within the skill of an ordinary artisan to select an optimum wavelength range for UV curing to optimize results of the repair operation.

It is well settled that determination of optimum values of cause effective variables such as these process parameters is within the skill of one practicing in the art. *In re Boesch*, 205 USPQ 215 (CCPA 1980).

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

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Lerner (4,661,182) is cited for teaching a method of repairing minor paint damage on an automotive substrate using a transparent polymeric film base, a paint coating on the surface of the film base, a pressure-sensitive adhesive, and a removable paper backing. Briggs (4,568,589) is cited for teaching a patch repair method for blemished painted metals using a fibrous cloth impregnated with a fast curing adhesive composition. Kopp (4,246,315) is cited for teaching a carrier material coated with a resin curable by UV irradiation for use in repairing blemished surfaces. Kopp teaches a multi-stage UV irradiation method using heat, pressure, and UV radiation wavelength of 150-500 nm.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer Kolb Michener whose telephone number is 703-306-5462. The examiner can normally be reached on Monday through Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive P. Beck can be reached on 703-308-2333. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-

0661.


Jennifer Kolb Michener
December 16, 2002

